

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

JUDITH A. WAGNER, Chapter
11 Trustee of the bankruptcy estate
of the Vaughan Company, Realtors,

Plaintiff,

v.

Master Case No. 12-CV-00817-WJ/SMV
(Case No. 12-CV-391-WJ/SMV)

SAID BANDI a/k/a SAID ALAGHE
BANDI, individually, SAID BANDA d/b/a
Bandi Engineering, BANDI
ENGINEERING COMPANY, INC., ADF
FINANCIAL, INC., SHAHLA BANDI a/k/a
SHAHLA ZOLFAGHARI, MARYAM
ALAGHE-BANDI, HAMID ALAGHE
BANDI, HOSSEIN ALAGHE BANDI,
ABDUL DABIRI, SHARAREH SHAHIN,
And NEW MEXICO ACCOUNTING
SPECIALISTS, INC.,

Defendants.

**ORDER GRANTING MOTIONS TO WITHDRAW AS COUNSEL
FOR CERTAIN DEFENDANTS
AND DISMISSING WITH PREJUDICE THE TRUSTEE'S
REQUEST FOR ATTORNEYS' FEES**

THESE MATTERS come before the Court upon *Motions for Permission to Withdraw Appearance* filed by Becker & Poliakoff, LLP (“B&P”) and Merrie Chappell Law PC (“MLC”) (together, the “**Firms**”) (Doc. Nos. 919 and 1001), requesting permission to withdraw as counsel of record for some of the defendants in the above-captioned proceeding (collectively, the “**Withdrawal Defendants**”). After considering the briefing, oral argument, and reviewing the documents and pleadings on file and being otherwise sufficiently advised on the premises the Court hereby FINDS:

The First Withdrawal Motion

A. On June 19, 2014, the Firms filed a *Motion to Withdraw Appearance* requesting Court permission to withdraw as counsel for defendants Abdul Dabiri, ADF Financial, Inc., and Hossein Alaghe Bandi (Case No. 12-CV-00817-WJ-SMV, Doc. No. 919) (the “**First Withdrawal Motion**”).

B. On July 3, 2014, Judith A. Wagner, Chapter 11 Trustee of The VCR Bankruptcy Estate (the “**Trustee**”), filed a response to First Withdrawal Motion, *Plaintiff’s Response in Opposition to Motion to Withdraw Appearance* (Case No. 12-CV-00817-WJ-SMV, Doc. No. 939), asking the Court to deny the First Withdrawal Motion and award Plaintiff all fees and costs incurred by the bankruptcy estate as a result of the Firms’ alleged unauthorized representation of some of the withdrawal defendants.

C. On August 5, 2014, the Firms filed, with permission, an out of time reply in further support of the First Withdrawal Motion. (Case No. 12-CV-00817-WJ-SMV, Doc. No. 981).

D. The Court heard oral argument on August 5, 2014. (Case No. 12-CV-00817-WJ-SMV, Doc. No. 985.)

E. On August 13, 2014, the Court entered an *Order* (Case No. 12-CV-00817-WJ-SMV, Doc. No. 994), reserving ruling on the First Withdrawal Motion, and, finding that an award of expenses attributable to the alleged unauthorized representation of some of the withdrawal defendants was appropriate, requiring the Trustee to supplement the record with an affidavit demonstrating which expenses, if any, were directly attributable to alleged the unauthorized representation of the withdrawal defendants.

F. On August 26, 2014, Plaintiff filed a *Notice of Fee Affidavit in Connection with Order* (Doc. No. 994) and an *Affidavit of James A. Askew* (Case No. 12-CV-00817-WJ-SMV, Doc. No. 1009) (the “**Fee Application**”).

G. On September 5, 2014, the Firms filed a response to the Fee Application. (Case No. 12-CV-00817-WJ-SMV, Doc. No. 1021.)

H. An Order establishing the amount of fees, if any, to be awarded pursuant to the Fee Application had not been entered and has been held in abeyance pending approval and consummation of the settlement of the above-referenced proceeding.

The Second Withdrawal Motion

I. On August 18, 2014, the Firms filed a second *Motion to Withdraw Appearance* requesting Court permission to withdraw as counsel for defendant Shahla Bandi a/k/a Shahla Zolfaghari (Case No. 12-CV-00817-WJ-SMV, Doc. No. 1001) (the “**Second Withdrawal Motion**”) (together with the First Withdrawal Motion, the “**Withdrawal Motions**”).

J. On September 2, 2014, the Trustee filed a response to First Withdrawal Motion, *Plaintiff’s Response in Opposition to Motion to Withdraw Appearance* (Case No. 12-CV-00817-WJ-SMV, Doc. No. 1016), asking the Court to order the Firms to disclose, for *in camera* review by the Court, the engagement agreement executed by the withdrawing defendant, or such other evidence that may exist, that shows that the Firms were authorized to act on her behalf.

K. On September 16, 2014, the Firms filed a reply in further support of the Second Withdrawal Motion. (Case No. 12-CV-00817-WJ-SMV, Doc. No. 1043.)

The Settlement

L. On February 5, 2015, the parties reached a settlement (the “**Settlement**”) of the above-captioned proceeding.

M. The Settlement provides that, once an order approving the Settlement is entered by the Bankruptcy Court, Trustee would file with this Court a motion to dismiss the above-captioned proceeding as to the Withdrawal Defendants and certain other defendants who were unrepresented by counsel (the “**Unrepresented Defendants**”) (the “**Motion to Dismiss**”). The motion would provide for dismissal, with prejudice, not only of all claims brought by the Trustee, but also of all claims that could have been brought by the Withdrawal Defendants and Unrepresented Defendants.

N. The Settlement further provides that, after notice to the Withdrawal Defendants and Unrepresented Defendants and opportunity to be heard, and assuming the Motion to Dismiss is granted:

a. Firms may submit a stipulated order granting the Withdrawal Motions and permitting their withdrawal; and

b. The Trustee will submit an order dismissing with prejudice the Fee Application (in connection with the Withdrawal Motions).

O. On April 2, 2015, the United States Bankruptcy Court of New Mexico entered an *Order Granting Motion to Approve Settlement of District Court Adversary Proceeding 12-CV-00391-WJ-SMV f/k/a Bankruptcy Court Adversary Proceeding 12-1149 against the Bandi Defendants*; finding that the Settlement is fair and equitable, and is in the best interest of and beneficial to the Debtor’s estate and creditors and should be approved, subject to ultimate approval of this Court.

P. On April 13, 2015, Plaintiff served a copy of the Motion and a *Notice of hearing on Chapter 11 Trustee’s Motion to Dismiss Case No. 12-CV-00391 as to Certain Defendants* on the Withdrawal Defendants and Unrepresented Defendants.

Q. On May 5, 2015, this Court held a hearing on the Motion to Dismiss.

R. None of the Withdrawal Defendants or Unrepresented Defendants appeared or filed a response to the Motion to Dismiss.

S. On May 22, 2015, this Court entered an *Order Granting Motion to Dismiss Case No. 12-cv-00391 as to Certain Defendants*, dismissing with prejudice as to all claims brought by the Trustee against Withdrawal Defendants and Unrepresented Defendants and as to all claims that were brought or could have been brought by the Withdrawal Defendants and Unrepresented Defendants against the Trustee or the bankruptcy estate; and otherwise approving the Settlement and directing the consummation of the Settlement and submission of orders disposing of all remaining issues.

T. Entry of this Order is appropriate under the circumstances and no reason exists to delay entry of hereof.

IT IS HEREBY ORDERED as follows:

1. The Withdrawal Motions are granted and the Firms are permitted to withdraw as attorneys for defendants Abdul Dabiri, ADF Financial, Inc., Hossein Alaghe Bandi, and Shahla Bandi a/k/a Shahla Zolfaghari.

2. The request for fees in connection with the Fee Application is denied and the Fee Application is dismissed with prejudice.



HONORABLE STEPHAN M. VIDMAR
UNITED STATES MAGISTRATE JUDGE

Submitted by:

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By: /submitted electronically

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Approved by:

ASKEW & MAZEL, LLC

By: Approved via e-mail on 05/ /15

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